

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

ERLINDA TENORIO and ABEL TENORIO
Plaintiffs,

VS.

THE CITY OF KYLE, TEXAS, UNION
PACIFIC RAILROAD COMPANY,
Defendants.

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CAUSE NO.:
A-17-CV-01116-SS

PLAINTIFFS' FIRST AMENDED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Erlinda Tenorio and Abel Tenorio, Plaintiffs, complaining of Union Pacific Railroad Company, and for causes of action would respectfully show the following:

1. Union Pacific Railroad Company has appeared and answered herein; no service of process is necessary at this time.

2. Plaintiffs are the owners of a house and lot located at 101 Tenorio St., Kyle, Texas 78640, more particularly described as Lot 14, Jose Addition, Kyle, Hays County, Texas, ("the subject property"). The subject property is adjacent to property, including storm sewers and drainage ditches, owned and purportedly maintained by the City of Kyle, Texas ("the City"). The property adjacent to the subject property owned by the City is adjacent to property owned and purportedly maintained by Union Pacific Railroad Company ("Union Pacific"). All references to Union Pacific include its employees and agents acting within the scope of employment.

3. Plaintiffs would show that on or about October 30, 2015, the subject property experienced severe flooding that caused Plaintiffs to suffer extreme mental anguish and distress as well as damage to the subject property and Plaintiffs' personal property located therein. Plaintiffs

would show that said flooding was the direct and proximate result of Defendant's failure adequately to maintain Defendant's property.

4. Defendant's intentional failure adequately to maintain its property resulted in a trespass upon the subject property and constitutes negligence, gross negligence, an unlawful taking of Plaintiffs' property without just compensation and other causes of action. Defendant's conduct was and is a direct and proximate result of damages suffered by each of the Plaintiffs, for which Plaintiffs hereby sue. Specifically, Defendant intentionally allowed Defendant's property to become cluttered with brush, debris and dead plant-matter which, inter alia, clogged the culverts intended to convey surface water away from Plaintiffs' property. Such failure created the conditions which caused surface water from rainfall to back up onto Plaintiffs' property and which caused the severe flooding of Plaintiffs' property.

5. Plaintiffs would show that Defendant had actual notice of the flooding event giving rise to this suit and that Defendant had actual knowledge of the propensity for the flooding event which occurred due to prior similar circumstances known to Defendant. Plaintiffs would show further that despite Defendant's actual knowledge of the propensity for the flooding of the subject property, Defendant intentionally and willfully ignored such knowledge and intentionally and wholly failed to undertake necessary and/or adequate measures to remove or mitigate the propensity for the flooding of the subject property, giving rise to Plaintiffs' damages. Further, Plaintiffs' damages arise from the condition of property owned by Union Pacific, as stated above.

6. Defendant's conduct was intentional, malicious, willful, wanton and the type of conduct for which the law allows recovery of exemplary damages, for which Plaintiffs sue to the extent allowed by law, with the amount thereof to be determined by the trier of fact.

7. In the alternative and in addition to the foregoing, Plaintiffs hereby seek a declaratory judgment in which the Court determines and delineates the rights of Plaintiffs against Defendant with respect to the facts of this case as well as the responsibilities and duties of Defendant in relation thereto, the liability of Defendant for intentionally breaching said duties and responsibilities and the damages to which Plaintiffs are entitled as a result thereof.

8. Plaintiffs further seek the recovery of all reasonable and necessary attorney's fees and all costs of court incurred in this cause through the trial of this suit and in the event of any and all appeals.

WHEREFORE, Plaintiffs pray that upon final trial Plaintiffs have and recover of and from Defendant, all actual damages suffered by Plaintiffs, exemplary damages, to the extent allowed by law, reasonable attorney's fees, prejudgment and post-judgment interest, all costs of Court, and for such other and further relief, both special and general, legal or equitable, to which Plaintiffs may be justly entitled to receive.

Respectfully submitted,

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By: 

Gary A. Calabrese
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ATTORNEY FOR PLAINTIFFS

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing document has been served upon all counsel of record herein by facsimile on this 12th day of February, 2018.



Gary A. Calabrese